2015 IL App (2d) 130366-U
No. 2-13-0366
Order entered February 5, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 11-CF-2213
ANDRE BELLFIELD,	)	Honorable John J. Kinsella,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Hudson and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: Where defendant was charged with burglary predicated on theft, the trial court did not abuse its discretion by allowing the admission of defendant's prior convictions for burglary and theft; although prosecutor's comments during rebuttal closing argument were improper, it did not substantially prejudice defendant or deny him a fair trial; trial court is affirmed.

¶ 2 Defendant, Andre Bellfield, was convicted of burglary (720 ILCS 5/19-1 (West 2010)) after a jury trial and was sentenced to nine years' imprisonment. Defendant argues on appeal that: (1) the trial court erred abused its discretion by allowing evidence of defendant's prior convictions for burglary and theft; (2) defendant was denied a fair trial by the prosecutor's misconduct during

closing argument; and (3) defendant argues the sentence order should be corrected regarding fines and fees. We affirm in part and modify in part.

¶ 3 I. BACKGROUND

¶ 4 The State charged defendant with burglary in that he entered GlenOaks Hospital with the intent to commit theft. Before trial, the trial court granted, in part, the State's motion *in limine*, allowing admission of evidence of defendant's three prior convictions; two for burglary and one for theft. In addition, the State moved to bar evidence that defendant, while at the police station, told Glendale Heights police officer Dawn Alaimo that he wanted to be arrested so that he could receive psychiatric treatment. The State argued that the statement was not relevant. Defense counsel argued that defendant's statement to Alaimo was needed to show that defendant did not intend to deprive the victim of her, Bini Stephen's, property. The prosecutor stated that he did not intend to "get into any post-arrest statements back at the Glendale Heights Police department." The prosecutor also said, "I'm not going to get into [defendant's statement to Alaimo that] *** I just want to go back to jail [or] any of the statements back at the police department." The trial court stated, "If [the State] opens the door *** then it can come in." The trial court then granted the State's motion barring defendant's statement to Alaimo based on hearsay grounds.

¶ 5 At trial, Bini Stephen testified as follows. On September 21, 2011, Stephen went to work as a nuclear medical technician at GlenOaks Hospital. She worked in the nuclear medical department. To reach the waiting room in the department, one had to walk down three hallways and through a door labeled with the department name. Most outpatients would need to be escorted to the department because of the difficulty in finding it. There were lockers in the break room. Stephen left her purse in a locker that was closest to the door of the break room. The break room was not easily accessible from the waiting room because it was not open to the

public. A sign on the break room door read "No radioactive material permitted beyond this point."

¶ 6 Stephen also testified as follows. At approximately 10:30 a.m., a black man, whom she later identified as defendant, walked into the break room and left the door ajar. Defendant took something from a locker but Stephen could not identify what it was. When defendant saw Stephen, he closed the door so that Stephen could not see into the room anymore. Stephen then asked the lead technician, Shaz, if anyone was working in that area. After Shaz said no one was supposed to be performing maintenance in the room, they both walked back to the break room. When Shaz opened the door, defendant said, "how do I get out of this place," and defendant started walking to the hallway. Shaz asked defendant what he was doing, but defendant, who was carrying a black duffel bag, ignored Shaz and walked past Shaz and Stephen. Shaz told Stephen to call security and followed defendant. Another woman in the hallway began to yell and defendant ran. Stephen checked the locker and determined that her purse was missing along with her wallet and identification.

¶ 7 In addition, Stephen testified as follows. About ten minutes later, police officer Alaimo arrived and Stephen told her what had occurred. Alaimo showed Stephen a wallet and she confirmed that it was hers. Stephen told Alaimo that her purse was still missing. After Alaimo radioed another police officer, they found Stephen's purse in another locker. Stephen got her purse and wallet back with their contents intact. Alaimo took Stephen to the front of the hospital where Stephen identified defendant as the man she saw in the break room. Stephen also testified that defendant did not have authority to go into the break room or to take anything out of her locker.

¶ 8 William Spralding, a hospital security officer, testified as follows. Spralding received a radio call about a black man who may have stolen a purse and was running from the nuclear medicine department. Spralding saw defendant running across the front lawn of the hospital with a black bag over his shoulder. Spralding chased defendant and yelled to defendant to stop. Due to hospital policy, Spralding gave chase as far as the curb, but continued walking after defendant. About a half a block from the hospital, a van pulled up beside defendant. Defendant spoke to the driver of the van which allowed Spralding to catch up to defendant. Spralding told defendant to stay where he was because the police were on their way. Defendant placed his hand in the bag and removed Stephen's wallet. Spralding asked defendant if he also had Stephen's purse and defendant replied no and emptied his bag. Spralding asked defendant if he had gone to the hospital to visit someone and defendant replied that no, he was there to steal something. Spralding then informed Alaimo what had occurred.

¶ 9 Alaimo testified as follows. When Alaimo arrived at the scene Spralding handed her the Stephen's wallet and he left. Alaimo spoke with defendant, informed him of his *Miranda* rights, received defendant's consent to search defendant's bag, and executed the search. The bag did not contain a purse. Glendale Heights police officer Roger Nott handcuffed defendant and placed him in a squad car. Alaimo went to the hospital where Alaimo learned that Stephen's purse was still missing. Alaimo radioed Nott and instructed him to ask defendant where the purse was. Defendant told Nott that the purse was in a locker near Stephen's. Alaimo and Stephen found her purse where defendant said it was. Alaimo took Stephen to the front of the hospital where Stephen identified defendant.

¶ 10 Called by the defense, Alaimo testified as follows. When she processed defendant at the police station he was frightened, upset and agitated. Defendant's personal property consisted of $257 in his wallet, clothes, and personal hygiene items.

¶ 11 Defendant testified as follows. Defendant had two prior convictions for burglary in 2003 and 2005, to which he pled guilty, and a conviction for theft in 2001, to which he also pled guilty. Defendant had been living with a friend in Chicago. Most of the time he lived with his mother but sometimes he stayed at a shelter. He made money by doing odd jobs.

¶ 12 Defendant also testified as follows. On the day of the incident, defendant left his friend's house in Chicago where he was living and boarded a train, intending to go "just anywhere." Defendant got off the train in Wheaton and boarded a bus that took him to GlenOaks Hospital. He went into the hospital to "get help, get arrested, and to the psyche ward in jail." On the day of the incident, defendant was "hearing voices and stuff." He was taking medication but it was not working. Defendant testified that he did not mean to keep Stephen's wallet.

¶ 13 On cross-examination defendant testified as follows. When defendant was confronted in the locker room he walked away to leave the hospital and did not give Stephen back her wallet. Defendant ran out of the building when he was told to stop. When Spralding caught up to defendant, defendant cooperated with him but defendant had nowhere else to go. Defendant told Spralding that he came to the hospital to steal. Defendant knew that stealing meant taking something from someone that does not belong to you and not returning it. Defendant agreed with the prosecutor that, "that's what he did at the hospital."

¶ 14 On redirect examination of defendant, defense counsel asked defendant if he remembered telling Alaimo that he "wanted to go to jail to get to the psych ward?" The prosecutor objected to defense counsel's question. Defense counsel argued that the testimony was necessary to prevent the prosecutor from arguing during closing that defendant recently fabricated "psychiatric problems." The trial court sustained the prosecutor's objection stating:

> "The fact that [defendant] made the same claim in a statement, it's a hearsay statement, and at best it's a prior consistent statement, which you are not allowed to introduce unless they had, in fact, challenged that this is the first time he brought this up; but they didn't do that."

¶ 15 The jury found defendant guilty of burglary. On April 5, 2013, the trial court sentenced defendant to nine years' imprisonment. Defendant filed his notice of appeal on April 9, 2013.

¶ 16 II. ANALYSIS

¶ 17 Defendant contends that the trial court abused its discretion by allowing evidence of defendant's two prior convictions for burglary and one prior conviction for theft. The State argues that defendant forfeited this issue because evidence of defendant's prior convictions was introduced during direct examination by defense counsel of defendant. The State cites *Ohler v. United States*, 529 U.S. 753 (2000), to support its argument.

¶ 18 The United States Supreme Court held in *Ohler* that "a defendant who preemptively introduces evidence of a prior conviction on direct examination may not on appeal claim that the admission of such evidence was error." *Id.* at 760. However, our supreme court has held that where a defendant preemptively discloses his prior convictions during direct examination, he has not forfeited the claim of error on appeal. *People v. Williams*, 161 Ill. 2d 1, 34 (1994). Because the issue of forfeiture involves a procedural issue rather than a constitutional or federal question, we are bound to follow the Illinois Supreme Court. See *People v. Spahr*, 56 Ill. App. 3d 434, 438 (1978). Accordingly, defendant's argument has not been forfeited.

¶ 19 A decision regarding whether a witness's prior conviction is admissible for purposes of impeachment is within the sound discretion of the trial court. *People v. Mullins*, 242 Ill. 2d 1, 15 (2011). In *People v. Montgomery*, 47 Ill. 2d 510 (1971), our supreme court held that evidence of a witness' prior conviction is admissible to attack the witness' credibility where: (1) the prior

crime was punishable by death or imprisonment in excess of one year, or involved dishonesty or false statement regardless of the punishment; (2) less than 10 years has elapsed since the date of conviction of the prior crime or release of the witness from confinement, whichever is later: and (3) the probative value of admitting the prior conviction outweighs the danger of unfair prejudice. *Id*. at 516. The *Montgomery* rule is now codified in the new Illinois Rules of Evidence. See Ill. R. Evid. 609, Committee Comment (eff. Jan. 1, 2011).

¶ 20 Defendant argues that the trial court improperly applied the third part of the *Montgomery* test because he was charged with burglary predicated on the intent to commit a theft. Therefore, allowing defendant to be impeached with his two convictions for burglary and one conviction for theft unfairly prejudiced defendant. The State contends that the probative value of the three convictions was outweighed by the prejudicial effect.

¶ 21 "It is a fundamental tenet of our criminal justice system *** that the introduction of evidence of other crimes to show or suggest a propensity to commit crime is an improper purpose and is prohibited." *Williams*, 161 Ill. 2d at 39 (1994). "[T]rial courts should not admit prior-conviction evidence as probative of guilt, rather than credibility." *People v. Cox*, 195 Ill. 2d 378, 384 (2001). "Convictions for the same crime for which the defendant is on trial should be admitted sparingly." *Id*. This is particularly relevant where the defendant is testifying and the State is attempting to impeach him with his prior convictions. *Id*.

¶ 22 However, a court is not barred from admitting, as it did here, the same or similar prior convictions for impeachment purposes. *People v. Barner*, 374 Ill. App. 3d 963, 971 (2007). Further, defendant's prior convictions were crimes bearing on credibility. See *People v. Diehl*, 335 Ill. App. 3d 693, 704 (2002) (theft and burglary are crimes of dishonesty). Defendant recognizes that his case rested on his testimony and, therefore, on his credibility. Although allowing multiple convictions for the same or similar crime increases the possibility of unfair

prejudice, under these circumstances we cannot say that the trial court abused its discretion by admitting the three convictions at issue for purposes of impeachment.

¶ 23 Next, defendant argues that he was denied a fair trial by the prosecutor's misconduct during closing argument. The State argues that the prosecutor's statement was not improper because he restated the facts and made reasonable inferences therefrom.

¶ 24 Prosecutors are afforded wide latitude in closing argument. *People v. Kitchen*, 159 Ill. 2d 1, 38 (1994). During closing argument, the prosecutor may properly comment on the evidence presented or reasonable inferences drawn from that evidence, respond to comments made by defense counsel which clearly invite response, and comment on the credibility of witnesses. *People v. Rader*, 178 Ill. App. 3d 453, 466 (1988). In reviewing whether comments made during closing argument are proper, the closing argument must be viewed in its entirety, and remarks must be viewed in context. *Kitchen*, 159 Ill. 2d at 38. Even improper remarks do not merit reversal unless they result in substantial prejudice to the defendant. *Id*.

¶ 25 In this case, before trial the prosecutor filed a motion *in limine* seeking to prevent defendant from presenting evidence that defendant told Alaimo that he wanted to get arrested so that he could receive psychiatric treatment. The prosecutor told the court that he would not "get into" the Alaimo statement. The trial court granted the State's motion. During trial the trial court sustained the prosecutor's objection to defense counsel's question to defendant about what he told Alaimo at the police station. During rebuttal closing argument, the prosecutor took improper advantage of this by arguing that defendant recently fabricated his defense. The prosecutor stated:

> "So you know, once again, I'm just relying on you people's common sense that someone doesn't take steps he took to go through the area that he did, and flee in the manner in

> which he did and only give it up once he's caught, and then he comes into court, a year and a half later and says, oh, all I really wanted was help."

Because the prosecutor knew that defendant had not recently fabricated his testimony, his remarks were improper and intentionally misleading, and the trial court abused its discretion by overruling defense counsel's objection. See *People v. Williams*, 192 Ill. 2d 548, 583 (2000)).

¶ 26 However, the prosecutor's improper remarks impugning defendant's credibility did not substantially prejudice defendant or result in an unfair trial. The evidence of defendant's guilt was overwhelming. See *People v. Gonzalez*, 388 Ill. App. 3d 566, 597 (2008) (holding that the prosecutor's improper remarks "were not of such a magnitude that the defendant was denied a fair trial" because the evidence of the defendant's guilt was overwhelming). Defendant testified that he did not mean to keep Stephen's wallet and that he went into the hospital to "get help, get arrested, and to the psyche ward in jail." However, defendant also testified that he told Spralding that he came to the hospital to steal and defendant agreed with the prosecutor that "stealing meant taking something that does not belong to you" and "not returning it." Further, there was testimony that defendant ran away from the hospital and failed to give Stephen her property when he had the opportunity to do so. Accordingly, the prosecutor's improper comment impugning defendant's credibility did not substantially prejudice defendant or deny him a fair trial.

¶ 27 Lastly, defendant argues the sentence order should be corrected regarding fines and fees. The State agrees that defendant is entitled to offset the $25 parole fine and the $15 police operations fee with his pre-sentence custody credit. The State also properly states that the $20 fine for the violent crimes victims' assistance fund (VCVA) was incorrectly assessed. See 725 ILCS 240/10(c)(1) (West 2011) (the VCVA fine would be proper only if no other fine had been

imposed). The assessment for the VCVA fine "is limited to $4 for each $40, or fraction thereof," for each fine imposed. 725 ILCS 240/10(b) (West 2011).

¶ 28 In conclusion, defendant is to receive monetary credit towards his $25 parole fine and his $15 State police operations fee and defendant is also assessed a $5 drug court fine and a $30 criminal LEADS surcharge fund fine. In addition, defendant's VCVA fine is reduced to $12 and his $20 monetary credit towards this fine is reduced to $0. We order these corrections to the sentencing order pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967).

III. CONCLUSION

¶ 29 The judgment of the circuit court of Du Page County is affirmed and modified.

¶ 30 Affirmed and order modified.